

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

ROBERT AYRES DaSILVA, JR.,

Plaintiff,

vs.

CASCADE COUNTY DETENTION
CENTER, COMMANDER
O’FALLEN, BOB EDWARDS, C/Os
BENNETT, LIGHT, VANZOUT,
TIBBETTS, GAMON, and
WALTERS,

Defendants.

CV-17-00115-GF-BMM-JTJ

ORDER

Judge Johnston entered an Order on January 26, 2018, in response to Robert DaSilva’s Motion under Civil Rule 12.1-12.2 for Failure to File a Notice of Appearance. (Doc. 28.) Local Rule 12.2 provides that “in all cases proceeding under 28 U.S.C. § 1915, the defendant or respondent must file a notice of

appearance at the time the first document, other than a return of the waiver of service of summons is filed.” Judge Johnston determined that counsel for Defendants filed a Notice of Appearance on January 17, 2018, and an Amended Notice of Appearance on behalf of Defendants on January 23, 2018. (Doc. 28 at 1.) Judge Johnston determined that no prejudice or culpable conduct resulted from the initial failure to file a notice of appearance. *Id.* Judge Johnston further determined that default should not be entered and Defendants will be allowed to defend themselves on the merits of the claim. *Id.*

DaSilva filed an objection to Judge Johnston’s Order. (Doc. 47.) In his objection, DaSilva objects to Judge Johnston’s “findings of no prejudice.” DaSilva further argues that Defendants are represented by competent professionals that have years of experience, while DaSilva “is fighting an uphill battle on slippery slopes.” DaSilva contended that default should have been ordered.

This Court reviews Judge Johnston’s Order for clear error. *Grimes v. City and Cnty. of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). This Court must defer to Judge Johnston’s Order unless it is clearly erroneous or contrary to law. *Id.*

The Court has reviewed Judge Johnston’s Order and finds no clear error. Judge Johnston determined that no prejudice or culpable conduct resulted from the initial failure to file a notice of appearance. Defendants will be allowed to defend

themselves on the merits of the claims. Public policy favors disposition of cases on their merits. *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998).

IT IS ORDERED that DaSilva's objection (Doc. 47) to Judge Johnston's Order (Doc. 28) is **OVERRULED**.

DATED this 5th day of April, 2018.



Brian Morris
United States District Court Judge